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BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Richard Shlofmitz

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Serial No. 76/216,192

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Matthew J. Greenberg of Rosenberg Calica & Birney LLP for  
Richard Shlofmitz.

Christopher W. Wells, Trademark Examining Attorney, Law  
Office 106 (Mary Sparrow, Managing Attorney).

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Before Hanak, Quinn and Chapman, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

On February 27, 2001, Richard Shlofmitz (an  
individual)<sup>1</sup> filed an application to register the mark THE  
INTERVENTIONAL HEART GROUP on the Principal Register for  
"clinical, medical, and diagnostic heart related services"  
in International Class 42. Applicant disclaimed the words

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<sup>1</sup> The record shows that applicant is an "M.D."

"Heart Group." The application is based on applicant's assertion of a bona fide intention to use the mark in commerce in connection with the identified services.

The Examining Attorney refused registration on the ground that applicant's mark, THE INTERVENTIONAL HEART GROUP, is merely descriptive of applicant's services under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

When the refusal was made final, applicant appealed to this Board. Both applicant and the Examining Attorney have filed briefs; an oral hearing was not requested.

The Examining Attorney contends that the proposed mark merely describes features and characteristics of applicant's services; that the words "interventional heart" relate to specific heart procedures, e.g., angioplasty, catheterization, stent implantation; that applicant disclaimed the words "heart group"; that applicant's proposed mark does not create a unique mark with a separate, non-descriptive meaning; and that neither imagination nor mental gymnastics is needed to discern the nature of applicant's services.

In support of the descriptiveness refusal, the Examining Attorney made of record (i) copies of numerous excerpted stories retrieved from the Nexis database, and

(ii) certain pages printed from various Internet websites, all to show how the words "interventional heart" are used to describe services that involve various medical procedures performed on the heart.

Applicant argues that the mark THE INTERVENTIONAL HEART GROUP simply "suggests that the applicant's group is somehow involved with the heart but in no way informs the public that the applicant's group specifically provides cardiac catheterization by examining the coronary arteries to diagnose disease and performs a coronary angioplasty to open arteries and restore blood flow to the heart" (brief, p. 1); that the mark generally suggests the services that applicant's group may provide, but it does not describe to the consumer or patient the true precise purpose of the group's services; that consumers must use imagination and mental gymnastics, if not independent research, in order to ascertain the particular purpose, function or characteristics of applicant's services; that while the mark suggests some form of services related to the heart, it could relate to medical procedures, or emotional support groups (e.g., for loss of a loved one), or rehabilitation of the heart through holistic medicines and spiritual healing, or a singles dating service; and that the

Examining Attorney has not demonstrated that applicant's mark is merely descriptive of applicant's services.

The test for determining whether a mark is merely descriptive is whether the term or phrase immediately conveys information concerning a significant quality, characteristic, function, ingredient, attribute or feature of the product or service in connection with which it is used or is intended to be used. See *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564 (Fed. Cir. 2001); *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978); *In re Eden Foods Inc.* 24 USPQ2d 1757 (TTAB 1992); and *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). Further, it is well-established that the determination of mere descriptiveness must be made not in the abstract or on the basis of guesswork, but in relation to the goods or services for which registration is sought, the context in which the term or phrase is being used or is intended to be used on or in connection with those goods or services, and the impact that it is likely to make on the average purchaser of such goods or services. See *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991). Consequently, "[w]hether consumers could guess what the product [or service] is from consideration of the mark

alone is not the test." In re American Greetings Corp., 226 USPQ 365, 366 (TTAB 1985). Rather, the question is whether someone who knows what the goods or services are will understand the term or phrase to convey information about them. See In re Home Builders Association of Greenville, 18 USPQ2d 1313 (TTAB 1990).

Applicant's disclaimer of "heart group" establishes that these words are at least merely descriptive of applicant's service of providing clinical, medical, and diagnostic heart related services. See In re K-T Zoe Furniture Inc., 16 F.3d 390, 29 USPQ2d 1787 (Fed. Cir. 1994); Quaker State Oil Refining Corporation v. Quaker Oil Corporation, 453 F.2d 1296, 172 USPQ 361 (CCPA 1972); and In re Ampco Foods, Inc., 227 USPQ 331 (TTAB 1985).

Further, the Nexis and Internet evidence, examples of which are reproduced below, demonstrates that the term "interventional heart" immediately conveys information about the purpose and function of applicant's services (emphasis added):

Headline: Cancer-Drug Crossover; Stents Coated With Taxol to Help Keep Arteries Clear

...When arteries become blocked after bypass surgery, balloon angioplasty or angioplasty with stent placement, the condition is known as restenosis. It is a major public health issue beyond the heart disease that forces patients into

**interventional heart** treatment in the first place. "Newsday (New York, NY)," March 6, 2001;

Headline: Hospital Program Must Be Justified

Patients who need open-heart surgery or angioplasty to unclog their heart arteries can't get either one at Winter Haven Hospital. Cardiologists there refer those patients to doctors at hospitals the state allows to do **interventional heart** procedures.

...

Local cardiologists would recruit several "interventional" cardiologists to do angioplasty and install stents to hold arteries open. "The Ledger (Lakeland, FL)," May 8, 2001;

Headline: Fayetteville Washington Regional Gets \$3 Million for Cardiovascular Unit

...Hospital officials also hope to expand the scope of its research participation. Washington Regional offers open-heart surgery, **interventional heart** procedures such as angioplasty and diagnostic testing. "The Arkansas Democrat-Gazette," July 18, 2001;

Headline: On The Dial

...Casper Citron's guests include...heart specialist Dr. Fayez Shamoon, discussing invasive and **interventional heart** surgery on WOR/710 AM, 10p.m. "Newsday (New York, NY)," December 30, 2000;

Headline: Polk EMS Policy Change Set for Nov. 1; More Heart Attack Patients Would End Up Being Brought to LRMC

...The EMS policy change could intensify Winter Haven Hospital's determination to get state permission to do **interventional heart** procedures. "The Ledger (Lakeland, FL)," October 19, 2000;

**Interventional Heart** Catheterization  
(Balloons and Coils)

An **interventional heart** catheterization is a special heart catheterization that may correct some types of defects...., [www.med.umich.edu](http://www.med.umich.edu);

**Interventional heart** specialists at Englewood Hospital and Medical Center choose Medcon telecardiology solution...., [www.hoise.com](http://www.hoise.com);

Diagnostic & **Interventional Heart**  
Procedures

...Interventional Procedures--Depending on the results of the diagnostic tests, cardiologists may recommend changes in diet or physical activity, prescribe medication, recommend one or more of the following cath lab interventional procedures, or refer a patient to a cardiovascular surgeon for bypass surgery...., [www.carolinas.org](http://www.carolinas.org); and

Interventional Catheterization  
Procedures--...The preparation a patient undergoes for an **interventional heart** cath procedure is essentially the same as for a diagnostic procedure...., [www.cardioconsult.com](http://www.cardioconsult.com).

When we consider the phrase THE INTERVENTIONAL HEART GROUP as a whole, and in the context of applicant's services ("clinical, medical, and diagnostic heart related services"), the phrase immediately informs consumers that applicant's services are intended to provide interventional heart procedures such as angioplasties and catheterizations. That is, the purchasing public would immediately understand at least one significant function,

characteristic and purpose of applicant's services, knowing that applicant's services involve the provision of "interventional heart" procedures. Applicant's argument that the phrase could refer to any number of other heart matters, such as, a singles dating service, an emotional support group or rehabilitation through holistic medicine and spiritual healing, are irrelevant in the context of applicant's services. See *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)(the mark need not recite each feature of the services in detail in order to be merely descriptive).

The combination of these words does not create an incongruous or creative or unique mark. Rather, applicant's mark, THE INTERVENTIONAL HEART GROUP, when used in connection with applicant's identified services, immediately describes, without need of conjecture or speculation, the primary purpose, function or characteristic of applicant's services, as discussed above. Nothing requires the exercise of imagination or mental processing or gathering of further information in order for purchasers of and prospective customers for applicant's services to readily perceive the merely descriptive significance of the phrase THE INTERVENTIONAL HEART GROUP as it pertains to applicant's services. See *In re Gyulay*,



820 F.2d 1216, 3 USPQ2d 1009 (Fed. Cir. 1987); In re Omaha National Corporation, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987); In re Intelligent Instrumentation Inc., 40 USPQ2d 1792 (TTAB 1996); and In re Time Solutions, Inc., 33 USPQ2d 1156 (TTAB 1994).

Here, the phrase unquestionably projects a merely descriptive connotation. See In re Tekdyne Inc., 33 USPQ2d 1949, 1953 (TTAB 1994), and cases cited therein. We believe that competitors have a competitive need to use this phrase. See 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §11:18 (4th ed. 2001).

**Decision:** The refusal to register on the ground that the mark is merely descriptive under Section 2(e)(1) is affirmed.